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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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24M1/0522

EXAMINER

LINTZ, P

ART UNIT	PAPER NUMBER
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2307

23

05/22/97

DATE MAILED:

*Staff*  
**NOTICE OF ALLOWABILITY**

**PART I**

- ☒ This communication is responsive to IDS, paper # 22
- ☒ All the claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice Of Allowance And Issue Fee Due or other appropriate communication will be sent in due course.
- ☒ The allowed claims are 1-20, now renumbered 2-20, 1
- ☐ The drawings filed on \_\_\_\_\_ are acceptable.
- ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has [...] been received, [...] not been received, [...] been filed in parent application Serial No. \_\_\_\_\_, filed on \_\_\_\_\_.
- ☐ Note the attached Examiner's Amendment.
- ☐ Note the attached Examiner Interview Summary Record, PTOL-413.
- ☐ Note the attached Examiner's Statement of Reasons for Allowance.
- ☐ Note the attached NOTICE OF REFERENCES CITED, PTO-892.
- ☒ Note the attached INFORMATION DISCLOSURE CITATION, PTO-1449.

**PART II**

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE "DATE MAILED" indicated on this form. Failure to timely comply will result in the ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
- ☒ APPLICANT MUST MAKE THE DRAWING CHANGES INDICATED BELOW IN THE MANNER SET FORTH ON THE REVERSE SIDE OF THIS PAPER.
  - ☒ Drawing informalities are indicated on the NOTICE RE PATENT DRAWINGS, PTO-948, attached hereto or to Paper No. 24. CORRECTION IS REQUIRED.
  - ☒ The proposed drawing correction filed on 1-3-95 has been approved by the examiner. CORRECTION IS REQUIRED.
  - ☐ Approved drawing corrections are described by the examiner in the attached EXAMINER'S AMENDMENT. CORRECTION IS REQUIRED.
  - ☒ Formal drawings are now REQUIRED.

Any response to this letter should include in the upper right hand corner, the following information from the NOTICE OF ALLOWANCE AND ISSUE FEE DUE: ISSUE BATCH NUMBER, DATE OF THE NOTICE OF ALLOWANCE, AND SERIAL NUMBER.

**Attachments:**

- Examiner's Amendment
- Examiner Interview Summary Record, PTOL-413
- Reasons for Allowance
- Notice of References Cited, PTO-892
- Information Disclosure Citation, PTO-1449

- Notice of Informal Application, PTO-152
- Notice re Patent Drawings, PTO-948
- Listing of Bonded Draftsmen
- Other

*Paul R. Lintz*  
**PAUL R. LINTZ**  
**PATENT EXAMINER**

***Allowable Subject Matter***

1. The indicated allowability of claims 1-20 is withdrawn in view of the newly discovered reference(s) to prior use and/or sale and prior disclosure. Rejections based on the newly cited reference(s) follow.
2. The Examiner apologizes for any inconvenience caused by the misplacement of Applicant's Prior Art submitted with the Information Disclosure Statement (Paper Number 11) of 15 September 1995, which has been located and considered.
3. The consideration of the Paper Number 11 Prior Art indicates that Applicant delivered a paper on the dates sometime between January 17-21, 1994 at the USENIX Winter 1994 Conference. The report, Technical Report 3002: File System Design for an NFS File Server Applicant purports on the front cover of the report to be a true copy of said paper. Further research indicates that the popular press reported the release and sale of Applicant's invention, the Write Anywhere File Layout (WAFL) system as early as May 3, 1993 (Review, Communications Week, vol 452, p. 25, 3 May 1993). Since the specter of prior use and/or sale and prior disclosure before the critical date, May 5, 1994, has been raised, the Allowance of the Application has been withdrawn and the following Office Action is composed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being disclosed at a Conference more than a year previous to Applicants' filing date by Applicants (USENIX Winter 1994 Conference, Technical Report 3002: File System Design for an NFS Server Appliance).

6. As to claims 1-20, Applicant's invention was orally disclosed at the USENIX Winter 1994 Conference as disclosed in Technical Report TR3002, which disclosed all the claimed limitations of Applicant's invention. Further proof of this disclosure is documented in said Conference Proceedings. The differences between Applicant's prior art disclosed at the Conference (Technical Report TR3002) and the Specification have not been clearly delimited by the Specification or by Jepson-Type claims.

7. Claims 1-20 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows:

8. In response to the above rejection applicant is required to answer the following questions as required under 35 USC 132, 37 CFR 1.56 and 37 CFR 1.104(b). If applicant fails to respond to these requirements and questions within the time set for response to this Office Action, this application will be regarded as abandoned. Since it appears from the record that the filing date is 31 May 1995, the "critical date" for consideration of issues under 35 USC 102 (b) is 31 May 1994.

i. Was the claimed subject matter of the present application or any part thereof "on sale" within 35 USC 102(b) before the critical date?

ii. If the answer to question i) is yes, on what date or dates?

iii. Was the claimed subject matter of the present application or any part thereof "in public use" within 35 USC 102(b) before the critical date?

iv. If the answer to question iii) is yes, on what date or dates?

v. When, where, by whom and to whom were any demonstrations and/or showings made or public use activities or on sale activities conducted, if any, within 35 USC 102(b) of the claimed invention or any part thereof before the critical date?

vi. Were the USENIX Winter 1994 Conference Proceedings available at the Conference? If not, when did they become available (Copyright publication date)?

9. In responding to these questions and requirements, applicant is required to submit copies of any materials and/or information which would be material to the examination of this application pursuant to the above quoted statutory and CFR provisions, including 37 CFR 1.56(a). Answers or materials supplied by applicant's counsel, if any, may be over Counsel's signature. Any answers or materials supplied by persons other than counsel, including applicant, must be in the form of affidavits or declarations.

Applicant is reminded that failure to fully respond to this requirement for information will result in a holding of abandonment.

#### **OTHER PRIOR ART MADE OF RECORD**

10. Applicant's Abstract from the USENIX winter 1994 Conference appear in DIALOG Record 4851706 INSPEC Abstract Number C9502-6120-020.

11. David Simpson ("Appliances' Take Over File Server Role", Digital News and Review, vol 11, no. 6, ch 21, 1994, p. 1) reviewed Applicant's invention and stated it "is praised for its speed and optimization, reportedly outperforming UNIX , by a comfortable margin. The system's write performance is impressive."

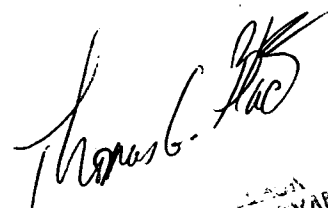
12. Those publications not previously considered in Applicant's Information Disclosure of 5 September 1995 (Paper Number 11) have been considered and referenced on a PTO Form-892.

### POINTS OF CONTACT

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Paul R. Lintz whose telephone number is (703) 305-3832. The Examiner can normally be reached on Mondays through Fridays from 8:00 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached at (703) 305-9707. The fax phone number for Art Unit 2307 is (703) 308-5357. NOTE: Documents transmitted by facsimile will be entered as official documents on the file wrapper unless clearly marked "DRAFT".

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

  
SUPERVISORY PATENT EXAMINER  
GROUP 2300